

**IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR**

::::

ORDER

**Smt.Taramani Sharma & Ors.
Vs.
State of Rajasthan & Ors.**

**S.B. CIVIL WRIT PETITION NO.6005/2003
UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA.**

DATE OF ORDER :: 15th December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Mr.M.Mridul Senior Advocate assisted by
Mr.R.N. Upadhyay, Advocate for the petitioners.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

This writ petition has been filed by petitioners Smt.
Taramani Sharma widow of late Shri Shyam Lal and his two

sons Mahesh Sharma and Uma Shanker, whom the respondents retired from their services by order dated 13th October, 2000 ostensibly on his own request.

According to the petitioners, late Shri Shyam Lal was appointed as temporary Class IV employee with the Government Ayurved Hospital w.e.f. 07th October, 1971. He was made permanent in the Government service by order dated 26th September, 1975 w.e.f 07th October, 1971. Said Shri Shyam Lal met with a road accident on 24th May, 1997 as a result of which he lost his consciousness and went into coma. At that time, petitioner No.2 who is his elder son was nearly 13 years old and his younger son petitioner No.3 was only 10 years old. Besides them and his wife Taramani Sharma he had the responsibility of supporting four daughters. The petitioners have placed on record number of documents which show that late Shri Shyam Lal was subjected to regular medical treatment from the date of his accident on 24th May, 1971 till he died on 07th June, 2003. Soon after his accident, said Shri Shyam Lal was admitted to Central Medical Centre, Delhi Road, Hissar and

was operated upon for head injuries. He was discharged from there on 28th May, 1997. He was thereafter admitted at V.K. Neurocare Hissar Hospital on 29th May, 1997 where from he was discharged on 13th June, 1997. Copies of discharge tickets of both the hospitals indicate that he remained there in the stage of unconsciousness. He was then admitted to Santokba Durlabhji Memorial Hospital-cum-Medical Research Institute, Jaipur on 14th June, 1997. According to the petitioners, although there were some signs of improvement but due to lack of financial support, the petitioners could not afford his treatment in that costly hospital in a costly city like Jaipur. He had to be therefore got discharged from that hospital after 23 days on 06th July, 1997 and brought back to his house. A Medical Board was constituted for examination of late Shri Shyam Lal which recommended that he may be granted leave from 08th July, 1997 to 28th July, 1997 and referred to Medical College again for physiotherapy and rehabilitation. He was then regularly taken to SMS Hospital, Jaipur and on their recommendation he was further granted leave. His condition however kept deteriorating. He was then again subjected to

medical examination by the Medical Board on 18th May, 1999 at SMS Hospital, Jaipur which by its report dated 08th February, 1999 opined that there was no improvement in neurological condition of the patient. He was therefore advised to apply for medical invalid certificate. The petitioners have also placed on record reports of the two more Medical Boards dated 27th May, 2000 and 03rd January, 2002 respectively wherein it has been mentioned that late Shri Shyam Lal was suffering from post head injury with right side hemiplegia with poor mental functions having disability of more than 75% and was unable to sit and eat. In fact, what is to be considered in this matter is whether late Shri Shyam Lal , with the physical and mental condition that he was in, could have 'voluntarily' exercised the option of retiring voluntary as proved for by rule 50 of the Rajasthan Civil Services Pension Rules, 1996. Whether the respondents could in law do away with the services of the petitioner if there was no valid request for voluntary retirement? Number of reports of Medical Boards are available on record such as the report dated 08th July, 1997, 26th September, 1997, 26th November, 1997, 24th February, 1998,

26th May, 1998, 08th February, 1999, 18th May, 1999, 27th May, 2000 and 03rd January, 2002. All these are medical reports of the Board consisting of at least three Senior Medical Officers of the State most of which are from SMS Medical College and Hospital, Jaipur. These medical reports are clear pointer to the fact that late husband of the petitioner Shri Shyam Lal was rendered disabled following unfortunate accident he met with.

When family of the petitioners was passing through such troublent times and mental agony of his prolonged and uncurling illness of its sole bread winner, the respondent No.3 came to them and obtained thumb impression of late Shri Shyam Lal for the purpose of making representation to the Government. According to the petitioners though the Shyam Lal was a literate man and used to make his signatures but because he was in the stage of unconsciousness, he was not in a position to put his signature therefore the respondent No.3 got his thumb impression on a plain piece of paper. He had an application scribed on that paper . Copy of this application has been placed on record as Annexure-P/9-A. This application in

reads as under:-

“ कार्यालय राजकीय आयुर्वेदिक चिकित्सालय झांगल
हनुमानगढ़ (राज.)
सेवा में,

श्रीमान् जिला आयुर्वेद अधिकारी महोदय,
जिला आयुर्वेद कार्यालय हनुमानगढ़

द्वारा : श्रीमान् चिकित्साधिकारी महोदय,
राजकीय आयुर्वेदिक चिकित्सालय झांसल
हनुमानगढ़

विषय : प्रार्थी का स्वैच्छिक सेवा निवृत्ति प्रार्थना पत्र स्वीकृत
करने हेतु :

मान्यवर जी,

उपरोक्त विषयान्तर्गत निवेदन हैं कि प्रार्थी की नियुक्ति दिनांक 7.10.1971 को आपके अधीनस्थ आयुर्वेद विभाग में ही परिचालक पद पर हुई थी। उस समय से प्रार्थी इसी पद पर कार्यरत हैं व मेरी जन्म तिथि दिनांक 20.4.1949 हैं।

प्रार्थी दिनांक 23.5.1997 को आकस्मिक दुर्घटनाग्रस्त हुआ जिसमें मस्तिष्क चोट लगने की वजह उसी समय से अचैतन (कौमा) की स्थिति हैं। आज दिनांक तक काफी प्रयास व चिकित्सा लाभ लेने के बावजूद कोई स्वास्थ्य ठीक नहीं हुआ हैं इस कारण प्रार्थी अपने पदेन कर्तव्य की पालना करने में पूर्ण रूपेण असमर्थ हैं इसलिए 31 अक्टूम्बर 2000 (31.10.2000) को मध्याह्न पश्चात् मेरी सेवा निवृत्ति स्वीकृत करे।

अतः प्रार्थना पत्र पेश कर निवेदन हैं कि प्रार्थी को स्वैच्छिक सेवा निवृत्ति लाभ दिए जाने हेतु आवश्यक कार्यवाही कर आदेश पारित करने की कृपा करें।

प्रार्थी अं.नि.

अ.नि. श्यामलाल शर्मा
अंगूठा निशानी परि. श्री श्यामलाल
शर्मा को प्रमाणित किया।

एस.डी./ चिकित्साधिकारी प्रभारी
राजकीय आयुर्वेद चिकित्सालय झांसल
जिला श्रीगंगानगर हनु."

According to the aforesaid application, voluntary retirement of late Shri Shyam Lal was sought from 31st October, 2000. On the basis of this application, the respondent No.3 passed an order on 13th October, 2000 directing thereby voluntary retirement of late Shri Shyam Lal w.e.f. 31st October, 2000. Accordingly the respondent No.2 sanctioned the pension and gratuity of late Shri Shyam Lal by order dated 23rd April, 2001. Even though the said Shri Shyam Lal was shown to have been voluntarily retired, yet no pension was sanctioned to him. Though the petitioner No.1 submitted several representations to the officials, yet no action was taken. In these representations she stated that the family was facing great financial crises and was in dire need of money and did not have a single penny for treatment of her husband. If in the absence of treatment her husband died, entire responsibility would be of the department. Copies of some of these representations dated 07th August, 2002, 08th October, 2002,

03rd March, 2002, 25th July, 2001, 10th August, 2001, 16th August, 2001, 18th August, 2001, 20th July, 2002, 06th September, 2002 and 10th March, 2003 have been placed on record. Even though the respondents sanctioned monthly pension to late Shri Shyam Lal but it was not paid either to him or to the petitioner. According to the petitioner, result of this attitude on the part of the respondent was that she could not arrange for proper treatment of Shyam Lal and he ultimately passed away in those indigent conditions on 07th June, 2003. According to the petitioner, when Shyam Lal was unconscious and particularly when the application which was scribed on a blank paper on which his thumb impression was obtained by respondent No.3 also stated that he was in coma, there was no valid request for voluntary retirement and therefore he could not have been voluntarily retired. Besides, there were cuttings and over-writings in the application especially the dates. The order of voluntary retirement should be therefore declared illegal and he may be deemed to have continued in employment. On that legal assumption, the petitioner submitted representation to the respondents on 02nd July, 2003

with a prayer that one of the members of the family should be provided compassionate appointment. The respondent No.3 by his order dated 02nd July, 2003 has turned down the request for compassionate appointment on the ground that in view of the voluntary retirement of late Shri Shyam Lal, the request for compassionate appointment could not be entertained under the rules.

In these facts the present writ petition has been filed with the prayers that the order of voluntary retirement be quashed and late Shri Shyam Lal should be declared to have continued in service till he died on 07th June, 2003 and the respondents be directed to pay all his emoluments together with interest @ 18% per annum and be further directed to grant compassionate appointment to the petitioner No.2 and further grant all his retiral/terminal benefits and further that the respondents be directed to pay a sum of Rs.10 lacs for damage and compensation.

The respondents have contested the writ petition by filing

reply. The respondents have stated in their reply that thumb impression of Shir Shyam Lal on the application for voluntary retirement was taken by respondent No.3 and the same was verified by Incharge of the Hospital where Shri Shyam Lal was working. This application was forwarded by the hospital by their letter dated 24th June, 2000. The respondents in para 6 of the reply have stated that "from a bare perusal of the application for voluntary retirement, it is revealed that the application has been got written from some one else and the thumb impression was taken thereon, and the same has been verified by the Incharge of the Hospital." According to the respondents there was no reason to deny the application as forwarded by the Hospital Incharge. As regards the over writing/cutting of the dates, it has been submitted that when Shyam Lal sought voluntary retirement w.e.f. 31st October, 2000 and this date was mentioned in the bracket also and was verified by the Hospital Incharge, there was no reason to disbelieve the same. It has been submitted that when the petitioner No.1 who is widow of late Shri Shyam Lal herself has been pressing for payment of pension and other retiral

benefits, she cannot be allowed to now challenge validity of the order of voluntary retirement. As regards their inability in making payment of pension, the respondents have come out with an explanation that the Sub Treasury Officer, Bhadra sought guidance from the Treasury Officer, Hanumangarh as to if payment of pension of Shyam Lal should be made to his wife because he was unconscious, the Treasury Officer, Hanumangarh vide his letter dated 25th July, 2001 sought instructions from the Pension Department. The Pension Department returned the letter in original to the Treasury Officer with the comments that it was within his own jurisdiction to take a decision and then Treasury Officer, Hanumangarh by his letter dated 10th August, 2001 asked the Sub Treasury Officer, Bhadra to proceed at his own. According to the respondents, as per the directions of the Finance (G&T Section) Department dated 20th July, 2002 if the pensioner is unconscious, payment of pension cannot be made to his wife or children. Under these circumstances, the Treasury Officer, Hanumangarh sent the GPO and PPO to the Pension Department in original. According to the respondents therefore

since Shri Shyam Lal was unconscious, payment of pension and gratuity could not be made to any one else as per the rules and therefore payment was not made. It was submitted that since husband of the petitioner No.1 had not died while serving the respondents and had been voluntarily retired much before his death, the case of petitioner No.2 for compassionate appointment could not be considered. It is therefore prayed that the writ petition be dismissed.

I have heard Shri M.Mridul, learned Senior Advocate assisted by Shri R.N. Upadhyay appearing for the petitioners and Shri Rameshwar Dave, learned Dy. Govt. Advocate and perused the material on record.

Shri M.Mridul, learned Senior Advocate has argued that the contract of service can be terminated by either of the parties whether master or servant in accordance with law. The government servant can make a request to terminate such contract of service by making a valid request for voluntary retirement which can be taken as an offer. But according to

him, such an offer can be made only by a person of sound mind. He in this connection referred to Section 16 of the Indian Contract Act, 1872 which inter alia provides as under:-

“Section 16: What is sound mind for the purpose of contracting.- A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.”

According to Shri M.Mridul, when Shri Shyal Lal was unconscious and was in coma, he was not capable of understanding, much less of forming, any rational decision upon his interest. The so called application seeking voluntary retirement therefore cannot be considered as a lawfully made application by a person of sound mind and a decision on the basis of such application is void ab-initio.

The very concept of the voluntary retirement is that the application of the Government servant who seeks voluntary retirement has to be made voluntarily by him and not by force of circumstances or under duress, coercion or compulsion, at

the instance of someone else. What is the meaning of voluntary can be best understood with the help of some of the dictionary meanings.

The Chambers Dictionary - 1996 edition has given the meaning of word voluntary as under:-

"Voluntary : adj spontaneous, free; done or made without compulsion or legal obligation; acting by choice, able to will; freely given, or supported by contributions freely given; done without expectation of payment or recompense of any kind, esp monetary; designed, intentional; subject to the will; of or pertaining to voluntarism. - n a person who does anything of his or her own free will; a piece of music played at will; a voluntary or extempore composition after a church service; an unwarranted fall from a horse; an upholder of voluntarism; a volunteer (obs)."

The OXFORD Advanced Learner's Dictionary – VI edition 2000 has given the following meaning to the word voluntary:-

"vol-un-tary – adj. **1** done willingly, not because you are forced: a voluntary agreement/arrangement, Attendance on the course is purely voluntary. to pay **voluntary contributions** into a pension fund, He took **voluntary redundancy**. **COMPULSORY 2** [USUALLY BEFORE NOUN] (OF WORK) done by people who choose to do it without being

paid: I do some voluntary work at the some hospital. She works there on a **voluntary basis**.

Voluntary services/bodies/agencies/organizations (= organized, controlled or supported by people who choose to do this and are usually not paid) **the voluntary sector** (= organizations which are set up to help people and which do not make a profit, for example charities) **3** [only before noun (of a person) doing a job without wanting to be paid for it: a voluntary worker **4** (technical) (of movements of the body) that you can control INVOLUNTARY."

The CHAMBERS'S Technical Dictionary – edition 1961 has

given the meaning of word voluntary is as under:-

"voluntary Under the control of the will.
Voluntary contraction. Reflex contraction of skeletal muscle."

The Webster's New World Dictionary – edition 1962 has

given the meaning of word voluntary is as under:-

"vol-un-tary – adj. [ME. Voluntarie; L. voluntarius, voluntary < voluntas, free will < volo, I wish, pres. Indic., of velle, to be willing, to will], 1. brought, about by one's own free choice; given or done of one's own free will; freely chosen or undertaken. 2. acting in a specified capacity willingly or of one's own accord. 3. intentional; not accidental; as, voluntary manslaughter. 4. controlled by the will: as, voluntary muscles.

5. able to will; having the power of free decision: as, man is a voluntary agent. 6. supported by contributions or freewill offerings; not supported or maintained by the state: as, voluntary churches. 7. arising in the mind without external constraint; spontaneous. 8. in law, a) acting or done without compulsion or persuasion. b) done without profit, payment or any valuable consideration. **n.** 1. a voluntary act or piece of work. 2. in music, a piece or solo, often an improvisation, played on the organ before, during, or after a church service.

SYN. Voluntary implies the exercise of one's own free choice or will in an action, whether or not external influences are at work (voluntary services); **intentional** applied to that which is done on purpose for a definite reason and is in no way accidental (an intentional slight); **deliberate** implies full realization of the significance of what one intends to do and of its effects (a deliberate lie); **willful** implies obstinate and perverse determination to follow one's own will despite influences, arguments, advice, etc. in opposition (a willful refusal)."

The CAMBRIDGE International Dictionary of English – edition 1996 has given the meaning of word voluntary is as under:-

"vol.un.ta.ry adj [not gradable] done, made or given willingly, without being forced or paid to do it. Is it voluntary, or do we have to go?. They chose to take voluntary redundancy. It's a charitable organization,

depending for its income upon voluntary contributions from the public. She does voluntary work for the Red Cross two days a week. A voluntary organization is one that is controlled and supported by people who give their time and money to it without being paid and that exists to help other people: The hospital has asked various voluntary organizations to help raise money for the new operating theater."

Meaning of the word voluntarily has been examined and commented upon by their Lordships of the Hon'ble Supreme Court albeit in the context of confession of the accused recorded under Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 in *Gurdeep Singh Alias Deep vs. State (Delhi Admn.)* reported in 2000 (1) SCC 498, but the observations are nonetheless relevant at least for the purpose of analogy. Their Lordships in para 20 of the said judgment observed as under:-

"20. So the crux of making a statement voluntarily is, what is intentional, intended, unimpelled by other influences, acting on one's own will, through his own conscience. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion of the conscience to speak out the truth normally

emerges when one is in despondency or in a perilous situation when he wants to shed his cloak of guilt and nothing but disclosing the truth would dawn on him. It sometimes becomes so powerful that he is ready to face all consequences for clearing his heart."

Enlightened thus by the meaning of the word voluntary, it would be clear that the request for voluntary retirement should have an element of willingness where the government servant making request has out of free will made up his mind to relinquish the service by this mode of retirement. Examined in the light of such meaning of the word 'voluntary', what has therefore to be seen is whether the request of late Shri Shyam Lal could at all be termed as voluntary.

Curiously enough, various medical reports/certificates which have been placed on record show that said Shri Shyam Lal was in the stage of coma not only when the request for voluntary retirement was shown to have been made in his name but from a much earlier time. But it is both interesting and surprising to note that the very application for voluntary retirement on which thumb impression of Shri Shyam Lal was

obtained itself states that he was in the stage of unconsciousness and coma. How possibly an application like this could be turned as voluntary when Shri Shyam Lal Sharma was in the stage of coma? The respondents themselves in para 5 of the reply have stated that the application of voluntary retirement reveals that it was got written from someone else and the thumb impression of Shri Shyam Lal was taken thereon. They however contend that since it was verified by Incharge of the Hospital, there is no reason to disbelieve it. One could perhaps ignore the overwriting in the application and the fact that it was undated, how could the respondents ignore the fact that application itself stated that the applicant was in the stage of coma and yet it was described as an application seeking voluntary retirement. Steps taken by the respondent No.3 appear to have been guided by his desire to help the family which was passing through the state of financial crises and was finding it difficult to arrange for medical treatment of the sole earning member of the family for such a long time. But such an action cannot be approved of in law. What is more, how helpful this gesture on the part of the

respondent No.3 was, would be still more interesting to see. Inspite of almost two dozen representations of the widow of Shri Shyam Lal Sharma, his pension and retiral benefits were not released. The Sub Treasury Officer, Bhadra was ultimately moved into making reference to the Treasury Officer, Hanumangarh that how could payment of pension and retiral dues be made to someone who was unconscious. The Treasury Officer, Hanumangarh by his letter dated 25th July, 2001 sought guidance from Pension Department and the Pension Department in turn returned the letter in original to Treasury Officer with the comment that it was within the jurisdiction of Treasury Officer himself to take a decision on the question. He then relying on the certain instructions of the Financial Department dated 20th July, 2002 decided that since Shri Shyam Lal Sharma was unconscious, payment of his pension and retiral benefits could not be made to his wife or children and in these circumstances, GPO & PPO were sent back to the Pension Department.

Upshot of the aforesaid discussion is that the impugned

order of voluntary retirement having not been made on the basis of voluntary request of late Shri Shyam Lal Sharma was not passed lawfully. Such an order in the facts of the present case cannot be sustained in law and is therefore liable to be quashed and set aside as being arbitrary, unreasonable and unconstitutional. Impugned order dated 13th October, 2000 retiring late Shri Shyam Lal Sharma is quashed and set aside. Consequent upon quashment of the order dated 13th October, 2000 the declaration must follow that Shri Shyam Lal continued in government service till he died on 07th July, 2006 and therefore the refusal of the respondents to consider request of the petitioner No.2 for appointment on compassionate ground having not received any consideration by the respondents on account of the alleged voluntary retirement of his father also deserves to be declared illegal.

As a result of the view that I have taken, late Shri Shyam Lal shall be deemed to have continued in government service till 07th June, 2003 and therefore the petitioners shall be entitled to receive arrears of his salary from the date of his

voluntary retirement till he died on 07th June, 2003 and all his retiral dues and family pension. The petitioners shall also be entitled to the interest of all the aforesaid amounts @ 6% per annum. The respondents are also directed to consider the case of the petitioner No.2 for compassionate appointment in accordance with the rules ignoring the delay caused on account of the wrong order of voluntary retirement passed by them and due to pendency of the present writ petition and pass necessary orders with regard thereto. Compliance of this judgment be made within three months from the date of receipt/service of the copy of this judgment.

[MOHAMMAD RAFIQ],J.

AKC.